

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

May 29, 2001

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

J. DAVIDSON & SONS
CONSTRUCTION COMPANY, INC.

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Docket No. WEST 2001-162-M

BEFORE: Jordan, Chairman; Riley, Verheggen, and Beatty, Commissioners

ORDER

BY THE COMMISSION:

On April 19, 2001, J. Davidson & Sons Construction Company (“Davidson”) filed a document entitled “Petition for Discretionary Review” with the Commission, challenging an Order Denying a Motion for a Show Cause Order issued by Administrative Law Judge Manning on March 20, 2001. Davidson had moved for an order compelling the Secretary to show why it failed to timely answer Davidson’s notice of contest. Although Davidson argues that the judge issued a final order, D. Reply Br. at 2, the order did not “finally dispose . . . of the proceedings before the judge.” *Council of S. Mountains v. Martin County Coal Corp.*, 2 FMSHRC 3216, 3217 (Nov. 1980). Jurisdiction therefore remains with the judge and Davidson’s petition for discretionary review is premature. 30 U.S.C. § 823(d)(1); Commission Procedural Rule 69(b), 29 C.F.R. § 2700.69(b); *Meek v. Essroc Corp.*, 14 FMSHRC 81 (Jan. 1992); *Campbell v. Anaconda Co.*, 3 FMSHRC 2763 (Dec. 1981); *Wiggins v. E. Associated Coal Corp.*, 5 FMSHRC 1668 (Oct. 1983).

Davidson’s petition in fact seeks review of an interlocutory order. Commission Procedural Rule 76(a)(1), 29 C.F.R. § 2700.76(a)(1), provides that interlocutory review “cannot be granted” unless (i) the judge has certified that his interlocutory ruling involves a controlling question of law and immediate review will materially advance the final disposition of the proceeding; or (ii) the judge denies the party’s motion for certification and the petition for interlocutory review is filed with the Commission within 30 days of the judge’s denial. Here, the judge did not certify his interlocutory ruling to the Commission, nor did he deny any motion by Davidson for certification. Accordingly, we deny it.

For the foregoing reasons, Davidson's petition for discretionary review is denied.

Mary Lu Jordan, Chairman

James C. Riley, Commissioner

Theodore F. Verheggen, Commissioner

Robert H. Beatty, Jr., Commissioner

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